***THE HON'BLE Ms. JUSTICE G. ROHINI**

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+WRIT PETITION No.13739 OF 2005

%Dated 16-09-2005

Ch. Subrahmanyeswara Rao, S/o. Satyanarayana,

Aged 29 years, R/o. Siripuram, Karapa Mandal,

East Godavari District.

..... PETITIONER

VERSUS

$ 1. The Commissioner, Prohibition & Excise,

Hyderabad.

2. The Superintendent, Prohibition & Excise Dept.,

East Godavari District, Kakinada.

3.The Station House Officer, Prohibition & Excise,

Tallarevu, E.G. District.

.....RESPONDENTS

! Counsel for Petitioner: Mr. Dammalapati Srinivas

^Counsel for Respondents : Govt. Pleader for Proh. & Excise

<GIST:

> HEAD NOTE:

? Cases referred

1998 (4) ALD 508

[2] 1998 (2) ALD 761

[3] 1998 (6) ALT 706 (D.B.)

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THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.13739 OF 2005

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Dated : 16th September, 2005

Between:

Ch. Subrahmanyeswara Rao, S/o. Satyanarayana,

Aged 29 years, R/o. Siripuram, Karapa Mandal,

East Godavari District.

.. Petitioner

And

1.The Commissioner, Prohibition & Excise,

Hyderabad.

2.The Superintendent, Prohibition & Excise Dept.,

East Godavari District, Kakinada.

1. The Station House Officer, Prohibition & Excise,

Tallarevu, E.G. District.

.. Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.13739 OF 2005

ORDER :

In pursuance of the Notification dated 26-5-2005 issued by the District Collector, East Godavari inviting tenders from the intending tenderers for grant of lease of right to sell liquor by shop for the period from 1-07-2005 to 30-06-2006, the petitioner has submitted his tender and in the auction held on 2-6-2005 he was declared as the successful bidder in respect of Koripalli Village of Karapa Mandal, East Godavari District. Accordingly, the petitioner furnished the required Deposits and Bank Guarantees together with the requisite documents which were forwarded to the 2nd respondent – Superintendent of Prohibition & Excise for issuance of a licence in favour of the petitioner. As required under the statutory rules, the petitioner has

selected the premises bearing Door No.2-154 of Koripalli Village of Karapa Mandal, E.G. District for establishing a shop, for sale of the liquor. The Station House Officer, Prohibition & Excise, Tallarevu having inspected the said premises on 15-6-2005, certified that the said premises was not situated within 100 mts. distance from any place of Public Worship or Educational Institution or Hospital and 50 mts. from any National Highway as specified under Rule 27 of the A.P. Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2005 (for short, 'the Rules') and that the premises was suitable for location of the retail shop. However, the 2nd respondent by order 23-6-2005 directed the petitioner to select another suitable premises in Koripalli village to avoid unnecessary complications in future.

A perusal of the said order shows that one R. Jagapati Rao who is the successful auction purchaser of the shop of Karapa village filed an Objection Petition stating that if the shop at Koripalli is established at Door No.2-154, he will be put to irreparable loss. In pursuance thereof, it appears that remarks were called for from the 4th respondent Station House Officer, Tallarevu, who enquired into the matter and submitted his remarks dated 22-6-2005. On the basis of the said report, the 2nd respondent passed the following order :

> *"The S.H.O., Tallarevu who enquired into the matter has reported that the successful tenderer of Koripalli (V) has selected premises to establish I.L. Shop at D.No.2-154, which is situated in between Karapa and Penuguduru villages in the middle of the paddy fields which is far away from the residential locality of the Koripalli as the Mahila Mandals of Koripalli village are protesting against the establishment of I.L. shop at Koripalli (V). The S.H.O. further stated that the proposed premises is not accessible to the villagers of Koripalli and the objection said to have been raised by the mahila mandals is an after thought.*
>
> *The auction purchaser of Koripalli (v) selected premises nearer to the Karapa village than Koripalli village. The tendered amount for Karapa village shops is Rs.17,51,000/- whereas the tendered amount for Koripalli village is Rs.6,02,100/-. If the licence is granted at the place selected by the auction purchaser the public of Penuguduru will go to that shop for consumption of liquor instead of going to Karapa village which will naturally affect the sale of liquor of the shops of Karapa village. It is disadvantageous to the villagers of Koripalli also as there is no road to go to that shop for consumption of liquor. The auction purchaser selected the premises with bad intention to grab the*

business of the neighbouring shops of Karapa village.

In view of the circumstances reported by the S.H.O., Tallarevu, Sri Ch.Subrahmanyeswararao, S/o. Satyanarayana, R/o. Siripuram, who is the successful auction purchaser of I.L. shop at Koripalli (v) is directed to choose another suitable premises in Koripalli (v) to avoid unnecessary complications in future."

The said order of the 2nd respondent dated 23-6-2005 is under challenge in this writ petition contending that the impugned order was passed on extraneous considerations to favour the successful bidders in respect of the shops in Karapa village. It was also contended that since the petitioner has satisfied the conditions specified under Rule 27 of the Rules, the 2nd respondent is not justified in not approving the premises selected by the petitioner.

In the counter-affidavit filed on behalf of the respondents, it is stated that the distance from the premises selected by the petitioner to the residential locality of Koripalli was 1.8 kms and there was no direct road from Koripalli to the selected premises except a Katcha road. It is also stated that the petitioner had intentionally selected the premises in question by the side of R & B Road in the paddy fields between Penuguduru and Karapa villages since there was no I.L. Shop sanctioned to Penuguduru village with a view to grab the business of other I.L. shops. It is further stated that in Koripalli village though a shop was existing at Door No.2-136 during the previous two years, there was no protest from the women of the village. Hence, the petitioner was rightly instructed to choose another suitable premises in Koripalli village. The said order is unassailable and does not warrant any interference.

I have heard the learned Counsel for the petitioner as well as the learned Government Pleader appearing for the respondents and perused the material on record.

The learned Counsel for the petitioner vehemently contended that once the conditions under Rule 27 of the Rules are satisfied, the competent authority is bound to grant the licence regardless of any other objections particularly at the instance of the rival traders. The learned Counsel submits that all the grounds on which the

impugned order was passed are extraneous and untenable, and therefore the impugned order is liable to be set aside. In support of his contentions, the learned Counsel has relied upon the decisions in K. VIDYASAGAR v. ASST. COMMR. OF PROHIBITION & EXCISE, R.R. DIST. and M. PERAIAH v. COMMISSIONER OF PROHIBITION & EXCISE, GOVT.OF A.P..

On the other hand, the learned Government Pleader submits that having regard to the facts and circumstances, the 2nd respondent has rightly concluded that the petitioner has selected the premises in question with an ulterior motive to grab the business of the other licensees situated in Karapa village and since the same would result in unhealthy competition, the 2nd respondent is justified in directing the petitioner to secure an alternative premises.

It is to be noted that in exercise of the powers conferred by Section 72 read with Sections 17, 28 and 29 of the A.P. Excise Act, 1968, the Governor of A.P. made the Rules called the A.P. Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2005 in which the procedure to be followed for granting the leases as well as issuance of licences has been provided in detail. Rule 27 of the said Rules which deals with the selection of premises for establishing the shop for sale of liquor, to the extent it is relevant, runs as under :

> *"**27. Selection of Premises** :-*
>
> *(1) The successful tenderer **subject to the approval** of Proh. & Excise Superintendent, shall select **suitable premises** for sale of IL & FL within the Municipal Corporation, Municipality, village/town/city or area/locality as the case may be notified in the District Gazette. It shall be at least 100 meters away from the places of Public worship, Educational Institutions, Hospitals and 50 Meters away from Highways except in Municipal Corporations and 5Kms belt area of the periphery of Municipal Corporations.(**emphasis supplied**)*
>
> *Explanation:- … … … … … … … …"*

A perusal of the above Rule, with particular reference to the words "***subject to the approval***" and "***suitable premises***" makes it clear that the Legislature intended to confer some amount of discretion on the Prohibition & Excise Superintendent in the matter of deciding suitability of the premises. There is nothing

in the Rule to indicate either expressly or impliedly that once the conditions specified under Rule 29 are satisfied, the Prohibition & Excise Superintendent is bound to grant the licence. On the other hand, the words “subject to the approval” and “suitable premises”, undoubtedly indicate that while assessing the suitability of the premises selected by the successful tenderer the Prohibition & Excise Superintendent, if necessary, can go beyond the requirements specified under Rule 29. Having regard to the particular facts and circumstances, even after compliance with the requirements under Rule 29, the Prohibition & Excise Superintendent in exercise of his discretion may decline to approve the premises selected by the successful tenderer. However such exercise of discretion shall not be arbitrary or unreasonable, but must be based upon cogent material having nexus to the purpose sought to be achieved.

A Division Bench of this Court in ASST. COMMISSIONER OF PROHIBITION & EXCISE vs. K. VIDYA SAGAR while considering the scope and object of Rule 6 of the A.P. Excise (Indian and Foreign Liquor Retail Sale Conditions of Licences) Rules, 1993, which is identical to Rule 27 of the Rules, held as under :

> *“… … the requirement of Rule 6 cannot possibly be said to be a hard and fast requirement having due regard to the language used and as such we feel it convenient to record that the same is merely illustrative in nature. A suitable place has to be selected having due regard to the requirement as laid down in Rule 6, but that does not mean and imply that the chapter ends there, otherwise the words “suitable” and “subject to approval” would be rendered totally otiose and nugatory.”*

For ready reference and proper appreciation, Rule 6 of the A.P. Excise (Indian and Foreign Liquor Retail Sale Conditions of Licences) Rules, 1993 may be extracted as under :

> “6. Selection of Premises:-
>
> (1) The Auction purchaser, subject to the approval of the Assistant Commissioner of Prohibition & Excise, shall select a suitable premises of the location of the shop within the village or locality, as the case may be notified in the Gazettee. It shall be atleast Hundred (100) meters away from the places of Public Worship, Educational

Institutions, Hospitals and Highways except in the limits of Municipal Corporations.

Explanation:- xxx xxx xxx xxx xxx xxx"

It is relevant to note that the Division Bench was dealing with a Writ Appeal against the decision rendered by a learned Single Judge in a writ petition in K. VIDYASAGAR v. ASST. COMMR. OF PROHIBITION & EXCISE, R.R. DIST. (1 supra) (relied upon by the learned Counsel for the writ petitioner) and having disagreed with the view expressed by the learned Single Judge, allowed the Writ Appeal.

In the light of the ratio laid down by the Division Bench in the above case and having regard to the language of Rule 29 of the Rules, I do not find any substance in the contentions raised by the writ petitioner.

It is also relevant to note that in the case on hand one of the grounds for disapproving the premises selected by the petitioner was to avoid unhealthy competition among the neighbouring licensees. It is not as if the 2nd respondent has passed the impugned order without application of mind to the relevant factors, but having called for a factual report from the 3rd respondent, who is the concerned S.H.O., and having considered the entire material on record, the 2nd respondent thought it fit to direct the petitioner to secure an alternative premises to avoid unnecessary complications in future. Such a discretionary order cannot be held to be vitiated on account of extraneous considerations much less arbitrary or unreasonable warranting interference by this Court in exercise of jurisdiction under Article 226 of the Constitution of India.

In this context, it may be relevant to extract the following observations made by the Division Bench in ASST. COMMISSIONER OF PROHIBITION & EXCISE vs. K. VIDYA SAGAR (3 supra) while refusing to interfere with the discretion exercised by the competent authority.

"Some amount of discretion ought to be there having due regard to the fact that the same amounts to legal licence, and admittedly there is no fundamental right in a manner of carrying on trade of intoxicants. It is a grant of privilege by the State Government to a licensee, and in the event, the concerned authority feels it expedient that a particular place or location, would not be suitable, question of interference does not arise, and it is where the Court would like to satisfy itself whether the decision of the State Government is informed with reasons or not. In the contextual facts, we do find that reliance was placed on the report of the S.H.O. The S.H.O. being a creature of the statute and being in-charge of the law and order, in our view, question of ascribing the same to be arbitrary or not being in accordance with law, does not and cannot arise."

It is also relevant to note that pending this writ petition, without prejudice to his rights the petitioner has secured an alternative premises bearing Door No.2-136 and having approved the same, the 2nd respondent has granted a licence on 14-7-2005. Thus, it is clear that the plea of the petitioner that there was an objection by some Women groups for establishing the shop in the village is without any basis.

For the aforesaid reasons, the Writ Petition is devoid of any merit and the same is accordingly dismissed. No costs.

16th September, 2005.

Note:- L.R. copy to be marked.

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THE HON'BLE Ms. JUSTICE G. ROHINI

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Dated : 16TH September, 2005.